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for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,
Debtor.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**APPELLEE IRVING H. PICARD, TRUSTEE'S
COUNTER-STATEMENT OF THE ISSUES TO BE PRESENTED ON APPEAL
AND COUNTER-DESIGNATION OF
ADDITIONAL ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Appellee Irving H. Picard, the trustee (the "Trustee") for the liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act ("SIPA"), 15 U.S.C. § 78aaa *et seq.*, and the substantively consolidated estate of Bernard L.

Madoff, individually, by and through his undersigned counsel, respectfully submits the following counter-statement of the issues (the “Counter-Statement”) and counter-designation of additional items to be included in the record on appeal (the “Counter-Designation”) in connection with the appeal by A&G Goldman Partnership and Pamela Goldman, each individually and putatively on behalf of similarly situated classes (collectively, the “Appellants”), from the Bench Memorandum Decision and Order Denying Motion of Picower Class Action Plaintiffs for a Determination that the Commencement of Securities Class Action Lawsuits against Nondebtor Parties is not Prohibited by a Permanent Injunction Issued by this Court or Violative of the Automatic Stay, entered on June 20, 2012 by the United States Bankruptcy Court for the Southern District of New York (Lifland, J.) (Case No. 08-01789 (BRL)) (ECF No. 4900).

COUNTER-STATEMENT OF THE ISSUES TO BE PRESENTED ON APPEAL

The Trustee hereby submits the following counter-statement of the issues on appeal:

1. Whether the Bankruptcy Court correctly found that the injunction issued by the Bankruptcy Court as part of its order, dated January 13, 2011, and affirmed by this Court, barred the Appellants from commencing and prosecuting securities law class actions (the “Class Actions”) against the estate of Jeffry Picower and related defendants (the “Picower Defendants”) in the United States District Court for the Southern District of Florida (“Florida District Court”).

2. Whether the Bankruptcy Court correctly found that the automatic stay provisions of section 362 of title 11 of the United States Code barred the Appellants from commencing and prosecuting the Class Actions.

3. Whether the Bankruptcy Court correctly found that the Class Actions are based on allegations that are nearly identical to (1) the Trustee’s allegations in the Trustee’s action against the Picower Defendants (the “Trustee’s Action”), and (2) the allegations set out in complaints

filed by Adele Fox and Susanne Stone Marshall in the Florida District Court, which the Bankruptcy Court found to be duplicative of the Trustee's Action.

4. Whether the Bankruptcy Court correctly found that the Class Actions asserted claims that are derivative and duplicative of the Trustee's Action.

5. Whether the Bankruptcy Court correctly found that the claims asserted in the Class Actions are inadequately particularized inasmuch as they rest on the same general conduct by the Picower Defendants that harmed all BLMIS creditors.

6. Whether the Bankruptcy Court correctly found that the Appellants, by means of the Class Actions, are seeking to circumvent the Court's decision in *SIPC v. BLMIS*, 424 B.R. 122 (Bankr. S.D.N.Y. 2010), *aff'd*, *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229 (2d Cir. 2011).

**DESIGNATION OF ADDITIONAL ITEMS TO BE INCLUDED
IN THE RECORD ON APPEAL**

The Trustee hereby counter-designates the following additional items to be included on the record on appeal:

<u>Item No.</u>	<u>Proceeding No.</u>	<u>Docket No.</u>	<u>Docket Text</u>
1	08-1789 (Bankr. S.D.N.Y.)	12	Order signed on 12/23/2008 on Application for an Entry of an Order Approving Form and Manner of Publication and Mailing of Notices, Specifying Procedures For Filing, Determination, and Adjudication of Claims; and Providing Other Relief. (Saenz De Viteri, Monica) (Entered: 12/23/2008)
2	08-1789 (Bankr. S.D.N.Y.)	492	Objection to trustee's determination of claim filed by A & G Goldman Partnership. (Chou, Rosalyn) (Entered: 10/01/2009)
3	08-1789 (Bankr. S.D.N.Y.)	3815	<i>Transcript</i> regarding Hearing Held on January 13, 2011 (Richards, Beverly) (Entered: 02/01/2011)

<u>Item No.</u>	<u>Proceeding No.</u>	<u>Docket No.</u>	<u>Docket Text</u>
4	09-01197 (Bankr. S.D.N.Y.)	1	Complaint against Jeffrey M. Picower, individually and as trustee for the Picower Foundation, Barbara Picower, individually and trustee for the Trust FBO Gabrielle H. Picower and the Picower Foundation, Capital Growth Company, Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, JAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Company, JLN Partnership, JMP Limited Partnership, Jeffrey M. Picower Special Co., Jeffrey M. Picower, P.C., Decisions Incorporated, The Picower Foundation, The Picower Institute For Medical Research, The Trust FBO Gabrielle H. Picower, Does 1-25 . Nature(s) of Suit: (11 (Recovery of money/property - 542 turnover of property)), (12 (Recovery of money/property - 547 preference)), (13 (Recovery of money/property - 548 fraudulent transfer)) Filed by Irving H. Picard. (Attachments: 1 Exhibit A2 Exhibit B) (Sheehan, David) (Entered: 05/12/2009)
5	09-01197 (Bankr. S.D.N.Y.)	11	Memorandum of Law in Opposition to Defendants' Partial Motion to Dismiss Under Fed.R. Bankr.P. 7012(b) and 7009 filed by Marc E. Hirschfield on behalf of Irving H. Picard. (Attachments: 1 Exhibit 1) (Hirschfield, Marc) (Entered: 09/30/2009)
6	09-01197 (Bankr. S.D.N.Y.)	25	Motion to Approve Compromise /Memorandum of Law in Support of Motion For Entry of an Order Pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure Approving an Agreement by and Between The Trustee and the Picower BLMIS Account Holders And Enjoining Certain Claims filed by David J. Sheehan on behalf of Irving H. Picard. with hearing to be held on 1/13/2011 at 10:00 AM at Courtroom 623 (BRL) Responses due by 1/6/2011, (Attachments: 1 Notice of Motion2 Exhibit A - Agreement3 Exhibit B - Stipulation4 Exhibit C - Proposed Order5 Exhibit D - Affidavit of Irving Picard) (Sheehan, David) (Entered: 12/17/2010)

<u>Item No.</u>	<u>Proceeding No.</u>	<u>Docket No.</u>	<u>Docket Text</u>
7	09-01197 (Bankr. S.D.N.Y.)	43	Order signed on 1/13/2011 Approving an Agreement by and Among The Trustee and The Picower BLMIS Account Holders and Issuing a Permanent Injunction (Related Doc # 25). (Saenz De Viteri, Monica). (Entry Modified on 1/24/2011 to Attach "Exhibit A" which was Previously Omitted) (Richards, Beverly). (Entered: 01/13/2011)
8	10-80252 (S.D. Fla.)	1	<i>Class Action Complaint against Capital Growth Company, Decisions, Inc., Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, JAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Companies, JLN Partnership, JMP Limited Partnership, Jeffry M. Picower Estate, through its Executor, William D. Zabel, Jeffry M. Picower Special Company, Jeffry M. Picower, P.C., Barbara Picower, The Picower Foundation, The Picower Institute of Medical Research, The Trust f/b/o Gabrielle H. Picower</i> filed by Joseph Galardi on behalf of Adele Fox. (Attachments) (Entered: 02/16/2010)
9	10-80252 (S.D. Fla.)	5	<i>Amended Complaint</i> filed by Joseph Galardi on behalf of Adele Fox. (Attachments) (Entered: 03/15/2010)
10	10-80254 (S.D. Fla.)	1	<i>Class Action Complaint against Capital Growth Company, Decisions, Inc., Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, JAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Companies, JLN Partnership, JMP Limited Partnership, Jeffry M. Picower Estate, Jeffry M. Picower Special Company, Jeffry M. Picower, P.C., Barbara Picower, The Picower Foundation, The Picower Institute of Medical Research, The Trust f/b/o Gabrielle H. Picower</i> filed by Joseph Galardi on behalf of Susanne Stone Marshall. (Attachments) (Entered: 02/17/2010)
11	10-80254 (S.D. Fla.)	7	<i>Amended Complaint</i> filed by Joseph Galardi on behalf of Susanne Stone Marshall. (Attachments) (Entered: 03/15/2010)
12	11-02898 (2d Cir.)	44	MOTION, to dismiss, on behalf of Appellee United States of America, FILED. Service date 01/26/2012 by CM/ECF. [509414] [11-2898]

<u>Item No.</u>	<u>Proceeding No.</u>	<u>Docket No.</u>	<u>Docket Text</u>
13	11-02898 (2d Cir.)	74	FRAP 28(j) LETTER, dated 04/04/2012, on behalf of Appellee United States of America, RECEIVED. Service date 04/04/2012 by CM/ECF.[571653] [11-2898]
14	11-02898 (2d Cir.)	83	MOTION ORDER, granting motion to dismiss [44] filed by Appellee United States of America, by ALK, BDP, PWH, FILED. [582645][83] [11-2898]

Dated: July 31, 2012
New York, New York

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